IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.1441/2002

Balchand S/o Shri Madholal Ji
Versus
The State of Rajasthan through P.P.

Date of Order ::: 12th April, 2007

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Sanjay Kumar Sharma, Counsel for the accused-appellant
Shri Harshvardhan Nandwana P.P., for respondent State
####

By the Court:-

Accused-appellant Balchand S/o Madholal has challenged the judgment and order dated 13.9.2002 of his conviction and sentence passed by the Additional District & Sessions Judge (Fast Track) No.2, Jhalawar, in Sessions Case No.20/2002, whereby he was convicted and sentenced under section 304, IPC, to 5 years rigorous imprisonment and a fine of Rs.1000/-; in default of payment of fine, to further undergo 2 months simple imprisonment.

Exhibit P-1, written-report, was lodged by Khushi Mohammad S/o Mangilal at Police Station Khanpur, wherein it was mentioned that his nephew

Ashiq told him that in his absence Balchand came and gave him beating on his person with kicks and fist. Thereafter his nephew became unconscious and immediately they took him to Hospital and there he was declared dead.

On the basis of this information, F.I.R. (Exhibit P-4) was registered at Police Station Khanpur, District Jhalawar, under Section 302, IPC, and investigation commenced. The inquest-report was prepared. The site-plan (Exhibit P-3) was also prepared. Postmortem of deceased Ashiq Ali was conducted and the postmortem-report is Exhibit P-5.

After completion of investigation, the police filed challan against the accused. The trial court framed charge against the accused under Section 304, IPC, which was denied and the accused claimed to be tried. The trial court, after considering all the evidence on the record, convicted and sentenced the accused-appellant, as mentioned above.

The learned counsel for the accused-appellant contended that accused has falsely been implicated by the complainant-party due to enmity and he did not inflict any injury on the person of the deceased and, thus, the trial court has wrongly convicted him.

The learned Public Prosecutor has supported the

judgment of the trial court.

I have considered the submissions of the learned counsel for both the parties and minutely scanned the impugned judgment and record of the trial court.

Exhibit P-1 is the written-report, wherein Khushi Mohammad mentioned that his nephew Ashiq, the deceased, told him that he was beaten by accused Balchand. On behalf of the prosecution, two eye-witnesses, PW-6 Nasir Hussein and PW-7 Raees, were examined and both have stated before the trial court that accused Balchand inflicted injuries by kicks and fists on the person of deceased Ashiq. Postmortem-report Exhibit P-5 shows the following injury on the person of deceased:-

> "Laceration 1" x ½" ½" on median lobe anterior aspect of Liver. There is Haematoma in Liver."

As per the postmortem-report, the opinion of the Doctor is as under:-

> "In my opinion the cause of death is Haemorrhagic shock due to injury of Liver."

PW-3, Dr. Nemi Chand Verma, has proved the injury sustained by deceased and postmortem-report

(Exhibit P-5), therefore, it is clear that there are two eye-witnesses in the present case, namely, Nasir Hussein (PW-6) and Raees (PW-7), and both have stated that accused Balchand had inflicted injury on the person of deceased and their statements are corroborated by the postmortem-report (Exhibit P-5) also. Although, initially the charge under Section 302, IPC, was framed, but, looking to the nature of the injury and further that no weapon was used by the accused, the accused was acquitted from the charge under Section 302, IPC, but the trial court convicted and sentenced him under Section 304, IPC.

After considering all the facts and circumstances of the case and also the prosecution evidence, as discussed above, I am of the view that the learned trial court has rightly convicted and sentenced the accused-appellant under Section 304, IPC, and no interference is called for by this Court therein. I do not find any merit in the contention of the learned counsel for the appellant.

In the result, the appeal is dismissed being devoid of any merit.

(Narendra Kumar Jain) J.

//Jaiman//